VIRGINIA LAW REGISTER.

E. C. BURKS, Bedford City, Va.....EDITOR.
C. A. GRAVES, Washington & Lee University, Lexington, Va., } ASSOCIATE
W. M. LILE, University of Virginia, Charlottesville, Va., } EDITORS.

Issued Monthly at $5 per Annum. Single Numbers, 50 Cents.

Communications with reference to CONTENTS should be addressed to the EDITOR at Bedford City, Va.; BUSINESS communications to the PUBLISHERS.

MISCELLANEOUS NOTES.

"EVERY man must bear the loss of a bad bargain legally and honestly made, else he could not hope to enjoy in safety the fruits of a good one."—*Harris v. Tyson*, 24 Pa. St. 347.

THE TORRENS SYSTEM OF LAND TITLES.—This experiment, which promised such excellent results in Cook county, Illinois, where it was adopted a few years ago, has been declared unconstitutional by the Illinois Supreme Court. The system is, we believe, of Australian origin, where it is said to have proved wonderfully successful in simplifying and cheapening the transfer of titles to real estate. We had hoped that, like the system of balloting, for which we are indebted to the same source, this Australian idea would find congenial soil in America, and that the Cook county experiment would lead to the general adoption of the system throughout the United States.

The ground upon which the Illinois law encountered the condemnation of the court was, that it conferred judicial powers upon the recorder of deeds and his examiners, in contravention of that clause of the State constitution which prescribes that the judicial power shall be vested in certain courts.

NECESSITY OF RULES OF PLEADING.—It is obvious that in every system of jurisprudence professing to provide for the due administration of public justice, some forms of proceeding must be established, to bring the matters in controversy between the parties who are interested therein before the tribunal by which they are to be adjudicated. And for the sake of the despatch of business, as well as for its due arrangement with reference to the rights and convenience of all the suitors, many regulations must be adopted to induce certainty, order, accuracy and uniformity in these proceedings. . . . .

There are many rules founded in artificial reasoning, but which nevertheless may be affirmed, with few exceptions, to be greatly promotive of public justice and subservient to private convenience. If, here and there, any of them work an apparent hardship or mischief, it will, on close examination, be found that they also accomplish much general and permanent good, and in this respect they par-

take only of the infirmity of all general rules, which must, in particular cases, give rise to some inequalities and shut out some individual equities and rights.—Story's Equity Pl. 1, 2.

INDEXING AS ESSENTIAL TO REGISTRY.—1. *Judgments:* In *Old Dominion Granite Co. v. Clarke*, 28 Gratt. 617, it was held that a judgment docketed, but not indexed, was a lien on the real estate of the debtor even against a *bona fide* purchaser for value. This decision was based on the language of the then existing statute (Code 1860, ch. 186, secs. 4, 8), which provided that the clerk should both docket and index judgments; and that a judgment should not bind a *bona fide* purchaser of real estate unless *docketed.* In other words, under this statute the requirement with respect to indexing was directory and not mandatory.

The law, as laid down in this case, was aftewards changed (Acts 1872–3, p. 16, now found in the Virginia Code of 1887, sec. 3561), by the provision that "Every judgment shall, as soon as it is docketed, be indexed by the clerk in the name of each defendant, *and shall not be regarded as docketed as to any defendant whose name is not so indexed.*"

2. *Conveyances:* In *Beverly v. Ellis*, 1 Rand. 102, it was held that where a deed, duly authenticated for registry, was lodged with the clerk for registry, and was by him admitted to record, it thereupon became a record, and was, therefore, notice to creditors and subsequent purchasers, though the clerk failed to copy it into the deed-book (and, of course, failed to index) as required by law.

The language of the statute under which this decision was made is not identical with the present statutory provisions on the subject (Va. Code 1887, secs. 2465, 2505), but the reasoning of the court in *Beverly v. Ellis* and *Old Dominion Granite Co. v. Clarke* (both *supra*) would apply with equal force to a deed duly recorded but not indexed, under the present statutes, cited above. There is no provision making the indexing of a deed a condition of its due admission to record, as there is in connection with the docketing of judgments. It would seem, therefore, that while the index is in fact the key to the deed-books, and is depended upon by all examiners of title, it is not essential in Virginia to due registry. See dicta in *Shadrack v. Woolfolk*, 32 Gratt. 707, 712–713, and in *Davis v. Beazley*, 75 Va. 491, 493.

We cannot but wonder that the Code tinkerers have not discovered this really serious defect in our registry laws. Let them make a note of it.

PRACTITIONERS AS TEACHERS.—We publish the following extract from an address delivered by Mr. Griffin Ogden Ellis, of the Detroit bar, before the annual convention of the Commercial Law League of America, recently held at Omaha, not more for the excellence of Mr. Ellis's ideas on the subject of the teaching of law than for the personal interest which his reference to the late Prof. Minor has for a large number of our subscribers. This encomium from one who never came under the magic influence of the subject of his eulogy, renders it not less interesting:

"I do not criticise the occasional appearance before a law school of some eminent member of the bar or occupant of the bench to deliver a single lecture or course of lectures—their appearance and example may prove a needed inspiration

to the students. It is to their employment in the capacity of regular teachers, for which position nature and business unite to unfit them, that I take exception. To be a successful teacher a man must devote his life to the work. He must devote his time to thought and study as to the best methods of imparting knowledge and training students and to the study in the historical and scientific phases of the subject or subjects that he is to teach. Teachers, like poets, are mostly born and not made, and the man who would be a success as a teacher cannot use that vocation as a mere plaything. It may be of value, particularly when the study of practice is taken up late in the course, to have the presence of men in active touch with the courts and their work, but there is also an objection in this, that such men, giving almost no help in class-room work, are also inaccessible to the students for special help during their study hours when they meet with difficulties. I admit the selection of eminent practitioners is supported by a very respectable show of reason, but I think that reason is mostly specious. In one word, the system is supported on the ground of expediency. It is alleged that competent teachers are hard to obtain, and that teachers who give their entire time to the work of teaching would cost more money than the schools could afford. That is probably true if as many teachers were employed under that system as under the present. But if a teacher devoted his whole time to the work, he could take care of many more subjects than any busy practitioner is willing to attempt, and with those subjects he would do better work than the numerous practitioners. There are few law schools in this country more famous than the law department of the University of Virginia. For many years that school had but one instructor—the revered John B. Minor. But this train of thought loses sight of the fact that in the selection of practitioners for law schools, as in the selection of candidates for political campaigns, the question of availability is an important one, and that man is generally given the preference whose name will bring the most notoriety to the school. In other words, the schools trade upon the reputations of their faculties for advertising purposes. This is not as it should be. The authorities who select those teachers, however, should remember the old quotation, "By their fruits ye shall know them." It might be a slower, but it would be a sounder, process to advertise the school because of good teachers rather than because of eminent lecturers. I would rather have sat at the feet of John B. Minor alone than to have taken my instruction from the whole Supreme Bench of the United States. I mention the bench of this court because the legal ability of its members is beyond question, but they cannot give to the work of teaching so much attention as it deserves. They are eminent, and so was John B. Minor, but his renown came from his value to his school, and not his value to his school from his renown."

COMMISSIONERS OF TAXATION, UNDER ACTS OF 1895–6.—There seems to be some misunderstanding amongst the tax officials of the State as to the true intent and meaning of the Act passed by the last legislature (Acts '95–6, p. 773), directing the appointment of a commissioner to examine court records and report funds liable to taxation. His duty is declared to be to "examine all such causes and records, with a view of ascertaining and reporting all moneys, bonds, notes and other evidences of debt, under the control of courts in said circuit, or fiduciaries appointed by such courts, or by any deed or will, subject to taxation under the

laws of this State." In performance of his duty he is required to "examine papers in all pending causes in said courts, or records of said courts, of his circuit, and ascertain what moneys, notes, bonds, choses in action, or other evidences of debt, are held by any bank, receiver, fiduciary, or other person, firm or corporation, or held subject to the order of such courts," and to make a report thereof to the commissioner of the revenue, in order that taxes may be assessed thereon.

We learn that in some of the counties the Act is construed as requiring the commissioner appointed under this statute to report, and of the commissioner of the revenue to assess for taxation, all debts secured by deeds of trust or other liens, of record in their respective counties, whether held by or payable to fiduciaries or not. That is to say, where a citizen of Richmond has lent money to a citizen of Lynchburg, secured by a deed of trust recorded in Lynchburg, the debt is to be assessed for taxation in Lynchburg, though the debt is not a fiduciary one.

While the statute is not happily worded, there is no justification whatever for any such construction. The obvious inconvenience and confusion which would result from such a construction, constitute in themselves a strong argument against it. The language first quoted above clearly shows that it is fiduciary funds, and those only, to which the statute has reference. The evidences of debt which the commissioner is to report are, as expressed in the first section, those "under the control of courts in said circuit, or fiduciaries appointed by such courts or [appointed] by any deed or will." The omission of the word "appointed," which we have inserted in brackets, is the source of the obscurity.

The failure to repeat this quoted language in referring again, and more specifically, to the duties of the commissioner, in the second section, gives rise to another obscurity. The language of the second section, as already quoted, makes it the duty of the officer to report all moneys, etc., held by any "bank, receiver, fiduciary, *or other person, firm or corporation,* or held subject to the order of such courts." This standing alone would of course require that every evidence of debt held by any "*other person, firm or corporation,*" and found on the records of the court, should be reported for taxation in that county. But the whole Act must be construed together, and not in detached parts. And so construing it, it is clear enough that the evidences of debt held by any "person, firm or corporation," contemplated by the Act, are *fiduciary* debts so held. If there were any doubt about this, all controversy is absolutely removed by reference to the title of the Act, which is in these words: "AN ACT to provide for a method for the better assessment of personal property under the control of fiduciaries and the several courts of the Commonwealth."

So that even if the statute had in express terms required debts other than fiduciary to be so reported and assessed, the provision would have been unconstitutional as not being expressed in the title.

See *Board of Supervisors v. McGruder*, 84 Va. 828; *Fidelity etc. Co. v. S. V. R. Co.*, 86 Va. 1; *Cahoon v. Iron Gate* (Va.), 23 S. E. 767; *Lacey v. Palmer* (Va.), 24 S. E. 930; s. c. 2 Va. Law Reg. 82.

JUDICIAL OPINIONS.—We extract the following sensible views from *Case and Comment:*

"The greatest criticism that can be made upon the length of opinions handed down by our courts should be aimed at the needless inclusion of unimportant mat-

ters. Few lawyers, if any, will criticise a judge for the length of his discussion of law questions, at least when it includes a review and analysis of the legal authorities thereon. But lawyers may well complain when their burden of expense for law reports is needlessly enlarged by swelling volumes with worthless matter. That detailed statements of facts are worthless to the profession, except so far as they need to be stated to make the law questions clear, is hardly to be disputed. Yet now and then opinions are found which for page after page repeat all the verbosity of the pleadings and the testimony. In some cases, doubtless, the judge goes into these matters with unnecessary particularity in order to show that he has done full justice to the parties on the facts of the case. But has a judge any right to inflict this rubbish on all who have to buy his reports without any other reason than the satisfaction of the parties to that case? Is it not an absurdity and a wrong to print as a part of the opinion of the court the whole undigested record sent up on appeal? Yet this or something very like it is sometimes done. In the reports of a very few States it is hardly an exception. The effect is to becloud what there may be otherwise of excellence in the opinion and to create a presumption against the intellectual quality of the writer. Yet sometimes such opinions are written by very able men whose ability is in other ways incontestably demonstrated by these same opinions. If they would stop to consider more carefully the question, what they ought to include in their opinions, the result would be good."

We submit the following preliminary statements as companion pieces, illustrating the two extremes which one is apt to meet with in looking through a single volume of the National Reporter System. In preparing these examples we have had no particular case or court in mind, and have not consciously modelled the examples after any specific opinion in any report. This explanation will save us from any imputation of being personal in our criticisms.

The supposed case is a creditor's suit brought to set aside a deed of trust on a stock of goods. The judge who is impressed with the wisdom of the foregoing views, would think (and we would heartily agree with him) that the following would be a sufficient statement of the case:

"This is a suit in equity brought by a creditor to set aside as fraudulent and void, a deed of trust executed by his debtor upon a stock of merchandise. The sole ground upon which the plaintiff bases his allegation of fraud and his right to relief, is that by the terms of the deed, the trustee is not to take possession of the goods until default is made in the payment, at a future day, of the debt secured in the deed; and that by implication the grantor is permitted to remain in possession of the shifting stock of goods and to continue his sales as before the execution of the deed. The lower court held the deed to be void.

"It is a well settled doctrine in this State," &c., &c.

Another judge, fond of detail and of much speaking, and indifferent to the criticisms of editors who never wrote a judicial opinion in their lives, would state the case thus:

"This is a suit brought in the Chancery Court of the county of A, by Jeremiah Q. Higginbotham, Jonathan P. Oldacre and Ichabod Isaacs, late partners as Jeremiah Q. Higginbotham & Co., against the Farmers Cheap Human and Cattle Food Supply Company, a corporation incorporated under the laws of the State of

———, and doing business in the town of R in the said county of A, on the following state of facts as set out in the complainant's bill: On the 1st day of November, 1895, the defendant corporation was engaged in the business of merchandising in the town of R, on the corner of X and Y streets. On that day the said corporation borrowed of William Hightower, of the city of Philadelphia, in the State of Pennsylvania, the sum of one thousand dollars, to secure which it executed to him its note for that amount, dated November 1, 1895, and payable at the ——— Bank of ———, one year after date, and on the same day executed a deed of trust to Thomas P. Jones and Aaron Smith, as trustees, by which it conveyed to the said trustees all the stock of goods, wares and merchandise contained in its said storehouse, and all other goods that might be placed therein, to secure the said note. The trustees were not required to take possession until after default in the payment of the note, and by implication the grantor retained the right to continue to sell the goods as before the deed was made. This deed, after due acknowledgment, was recorded on the day of its date, in the clerk's office of the county court of A county. Shortly after this deed was executed, the plaintiffs filed their bill alleging that the defendant was indebted to them in the sum of $763.87, with interest thereon from the 4th day of March, 1895, and $2.60 costs of protest, the said debt being represented by a negotiable note made by the defendant, dated December 31, 1894, and payable to the plaintiffs sixty days after date, at the ——— Bank, in the city of ———, and containing a waiver of homestead exemption, which said note was dishonored and duly protested on the 4th day of March, 1895; that the deed, made as aforesaid, to Thomas P. Jones and Aaron Smith, trustees (a certified copy of which is filed as an exhibition with the plaintiffs' bill), is fraudulent as to the creditors of the grantor, and void upon its face, in that it conveys to the trustees a shifting stock of goods, with the right reserved to the grantor to continue to sell the goods as before the deed was made; that such a reservation carries with it the power to defeat the security which is the ostensible object of the deed, and reserves a benefit to the grantor repugnant to the avowed purpose of the transaction; that such a deed is therefore but a sham and a deceit, and is absolutely void and of no effect whatsoever; and the plaintiffs pray that it may be set aside and the goods composing the said stock be subjected to the payment of plaintiffs' said debt, with interest thereon as aforesaid and the costs of said suit; that a receiver be appointed to take charge of the said goods; they also pray for general relief. The trustee, the grantor and the creditor secured are all made parties. To this bill the defendant demurred at the rules, and at the next term, by leave of court, filed its answer, by which, without waiving its demurrer, but insisting on the same, it admitted the plaintiffs' debt, as set out in the bill; it also admitted the execution of the deed of trust, but denied *in toto* that it was made to hinder, delay or defraud creditors. To this answer the plaintiffs replied generally. Numerous depositions were taken by plaintiffs and defendants, and the case came finally to be heard at the June term, 1896, of the chancery court of the county of A. The learned judge of that court held that, &c., &c. Whereupon an appeal was allowed by one of the judges of this court.

The single question for the court to decide is, whether such a deed as that described is void upon its face, when attacked by creditors of the grantor. It is well settled," &c.